

FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
NOVEMBER 7, 2017

CALL TO ORDER A meeting of the Flathead County Board of Adjustment was called to order at
6:01 pm approximately 6:00 p.m. at the South Campus Building, 40 11th
Street West, Suite 200, Kalispell, Montana. Board members present were Ole
Netteberg, Gina Klempel, Cal Dyck, and Roger Noble. Mark Hash had an
excused absence. Rachel Ezell, and Mark Mussman represented the Flathead
County Planning & Zoning Office.

There were 9 members of the public in attendance.

APPROVAL OF Klempel motioned and Netteberg seconded to approve the October 3, 2017
MINUTES minutes as written. The motion passed unanimously.
6:10 pm

PUBLIC None
COMMENT
(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)
6:02 pm

WILLIAM & A request from William & Alana Myers for two (2) conditional use permits for
ALANA MYERS the establishment of 'Short Term Rental Housing' on properties located at 988
(FACU-17-10) and 1006 Myers Lane near Bigfork, MT. The subject properties are each
(FACU-17-11) approximately 5 acres in size and zoned SAG-5 (Suburban Agricultural) in the
6:02 pm Bigfork Zoning District. The properties can legally be described as Lot 2 of Ten
Arrows Ranch Subdivision and Tract 4 in NW ¼ NE ¼ COS 20120-A in
Section 17, Township 27 North, Range 19 West, P.M.M., Flathead County,
Montana.

STAFF REPORTS Ezell reviewed Staff Reports FACU-17-10 and FACU-17-11 for the Board.
6:03 pm

BOARD Noble asked what the purpose of the bunkhouse was.
QUESTIONS
6:09 pm Ezell said the applicants wanted to rent it out but planning staff told them they
could not do that with this application. It was discussed at the BLUAC meeting.
Myers said there was not a bed and it would not be used. He said that originally

it was going to be used but it is no longer going to be. They said it was free standing and they intended on selling it.

**APPLICANT
PRESENTATION
6:11 pm**

William Myers, 1010 Myers Lane, handed out some photographs of the property, the cabins, and a copy of Ken Kalvig's letter. He went through the photos, explaining each of them to the board members. He spoke about a neighbor having cameras pointing to their property and commented that the neighbor watches them. He discussed the property description and spoke about the cabins on each property and what amenities each of them have. He went through each of the findings of fact in the staff report and explained how each of the cabins met all the criteria for short term rentals. He stated that, in working with the county zoning office, it caused them to make some necessary adjustments. These adjustments made were to not include any additional structures as part of their rentals. They had originally offered a barn and the bunkhouse as an option for renters. They also removed an RV option as they are not allowed to rent it out. He did point out that, while they had offered it, nobody had ever rented it and that RV's were never parked at the cabins. He then spoke about the comments received and wanted to reply to the complaints that were received. He spoke about each complaint and summarized they lacked evidence of substance. He stated the comments were not really about the short term rentals but rather the large events they held in the past. He spoke about the wedding venues they held in the past and explained they stopped holding weddings after they withdrew their application for a recreational permit. He continued to address the complaints and stated they would not violate the conditions of the conditional use permit as they would lose the permit. He read several statements from a comment dated September 18th from Ken Kalvig and commented there would be serious repercussions if they were to hold weddings. The assumption cannot be logically drawn from the application for short term rentals. The application should be taken at face value. They do not want a lawsuit to be filed against them as they would lose their permit. They have made mistakes in the past and have apologized for those mistakes. They were accused of hooking up the bunkhouse to their septic system and he wanted to assure the board they had not violated any septic codes. He stated they had never run a bed and breakfast which they were accused of. They stopped holding weddings as of September, 2015, after the BLUAC meeting. He stated that it had been a little over two years since they have had any weddings or big events on their properties. They have turned away at least 30 requests for holding weddings on their property. They only use their property for family weddings and had notified the county when they held one this summer. They do not allow RVs to park on their property, with the exception of family. No complaints have been made this summer or even before that, after the BLUAC meeting. He reiterated that the comments were not really about the short term rentals but about wedding events they held in the past. They did rent out their cabins prior to applying for a conditional use permit and wanted the board to know there was

not one complaint until the neighbors were notified of the application for short term rentals. They are taking the right steps to become a legal short term rental. He stated he thought Kalvig was accusing him of asking for special favors but he wanted the board to know he was asking for fair consideration.

Lianna Danielson, 103 Sunset Court, is one of the Myers children. She commented they are a very large family. She stated that sometimes it may appear like there is a large event going on but it's their family. Sometimes they camp there and they have stayed in the cabins. They try to be respectable and aren't a nuisance to their neighbors. She felt it should be the property owner's right to use the property in a way that is appropriate. She reiterated there wouldn't be any violations of the permit and voiced that their family is all in support of approval.

**BOARD
QUESTIONS**
6:45 pm

None

**PUBLIC
COMMENT**
6:45 pm

Ken Kalvig, 100 Cooperative Way #202, spoke about section 2.06.090 of the Flathead County Zoning Regulations. He commented it was impossible to take the applications at face value. The Myers told the planning office one thing and told the public another. This is not the first time. He represented a neighbor of the Myers, whose time here has been disrupted because the Meyers have opened up their property to the public, many of who were not respectful of the quiet expectations of a residential neighborhood.

Although the Meyers say they will not allow events and parties, they advertised that six weeks ago, after the application for permits had been filed. He spoke about his comment with a timeline of what the Myers had done. He stated that the Meyers follow the rules for a while but then attempt to break them again. He spoke about a violation the Myers pled guilty to. Just over twelve months after that violation they started advertising again. The applications are incomplete and not presenting a true picture according to Kalvig. Given the history one would think an applicant might go overboard with burden of proof. He spoke about the air bnb ads in which the applicants give a different set of details than what the application says.

He spoke about the BLUAC meeting and stated they unanimously denied the applications. The BOA would set a terrible president if they find a way to approve the applications. If the applications are approved, his client would want there to be the most stringent conditions. It would put the pressure on the neighbors to be the neighborhood watch dogs.

He spoke of the comment he sent regarding what was advertised and what was stated by Mr. Myers tonight. He read through the advertisements that were posted that conflicted with what the Meyers said regarding the amenities

available. He said that his client was reacting to what were on the ads that conflicted with what the stated intent was on the applications. Kalvig asked that the BOA please enforce the language of the regulations and he asked that both applications be denied.

Dan DeMars, 1140 McCaffery Rd, used the map to show that he had clear visibility from his property. He also showed the board where his property was located and showed them the fence he built in 1990. He stated the Myers have trespassed before and he has had to put up with garbage and harassment. DeMars felt like a chain link fence was not too much to ask for. He spoke about the BLUAC where it was addressed that they had broken the law and yet nothing had been done about that. He showed the board the location of the cameras on his property. They were surveillance cameras for trespassers.

Joe Feise, 1257 McCaffery Rd, echoed what Ken Kalvig stated. He wanted a lot of restrictions implemented if the board were to approve the permits. He reiterated the neighbors would have to be the watchdogs. He said in the past there have been a lot of cars parked on McCaffery Road and he doesn't want that to happen in the future. He did ask the question if the cars had been parked on the road due to fire restrictions in August.

Mark Shiltz, 275 Echo Lake Rd., said his family had been on Echo Lake Road for over 100 years. The historic use and respect of the neighborhood had always been exemplary. He felt like this issue had joined their neighborhood in opposition to this family's use of their property. He admitted that the neighbors had turned in to watchdogs because they had to monitor their neighborhood. He asked for denial of the application.

Trish Eaton, 1305 McCaffery Rd, pointed out her property on the map. She said would like to have a good relationship with her neighbors. It has been hard for her to trust them. She would like the board to deny the applications and would like to be good neighbors.

**BOARD
DISCUSSION
7:08 pm**

Klempel said you can't advertise a venue that doesn't exist. She felt like that was a slap in the face to the neighbors and to the county. She stated she did not believe that every violation that was done was done out of ignorance. She was not just taking into consideration the BLUAC meeting, or even the neighbor's complaints, but to all the related matters. Even if you take it at face value and you know the truth is somewhere in the middle, it is still a slap in the face as far as neighbor's and county regulations.

Noble said when he looks at these things relative to challenging the counties statutes; he didn't feel all the criteria had been met. He said he was looking at the criteria more than the neighbor's issues, although he acknowledged that part of the approval of a conditional permit that it would not have an impact to the neighborhood. When he looked at the site plan, he didn't feel the application was adequate.

Netteberg said if there is one thing that was always irritating, it was the “after the fact applications”. He asked the Myers why there were cars parked on McCaffery Road [during a family wedding] when the ad stated there were 40 acres to park on.

Myers said during the summer the fire restrictions didn’t allow people to park in the fields. It was approved through the sheriff’s office. They parked as much as they could on the road leading to their property but the excess cars parked on McCaffery Road.

Netteberg continued to say that on face value he sees nothing wrong with the applications. It was the history that was causing the problems.

Dyck said they had the responsibility to look at everything together. He stated that a conditional use permit was something that given if they met all the criteria. He read a statement from the neighborhood plan stating, “the neighborliness and community enthusiasm must be nurtured as part of the legacy”. He felt those were concerns where the responsibility was on the applicant to follow as to whether they get the conditional use permit approved. He also felt it was important that there be a very clear and concise plan. His concern was that the applicant had done things that were against the rules which were already in place at the time of them doing it. He stated that ignorance of the law is no excuse. There was a responsibility of the applicant to work with their community and the frustrations between all of them. This concerned him. He stated that the board also needed to take a look at the concept of the BLUAC meeting and how they voted to deny and the reasons were there. He felt like it would be wise for the applicant to repair relationships within the neighborhood and his community before he decides to do something with his property. He understands the application but the neighborhood does not have the trust with them and it would be beneficial to repair the trust of the neighbors. There have been multiple violations and he felt like it stood upon the applicant to prove they could be good neighbors and to work with them through the process. He felt, at this time, the application was insufficient and he felt like there was a responsibility for everybody to look into what the community was wanting in that area. He also stated that there was a responsibility to those who own property to try and make this work. He said that this is a neighborhood, a community, and it had been fractured. He didn’t know if there were any restrictions they could put on the permit that would restore that community. He stated he didn’t feel the application was full or complete

**MOTION TO
DENY
(FACU-17-10)
(FACU-17-11)
7:20 pm**

Dyck made a motion seconded by Noble to deny the applications.

**ROLL CALL TO
DENY
(FACU-17-10)
(FACU-17-11)
7:20 pm**

On a roll call vote the motion passed unanimously.

**NEW BUSINESS
7:22 pm**

None

**OLD BUSINESS
7:22 pm**

None

**ADJOURNMENT
7:22 pm**

The meeting was adjourned at approximately 7:22 pm on a motion by Dyck seconded by Noble. The next meeting will be held at 6:00 pm on December 5, 2017.



Mark Hash, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED __/__/2017